

House Committee on International Relations
Subcommittee on International Terrorism and
Nonproliferation

“Checking Terrorism at the Border”

April 6, 2006

Testimony of Janice L. Kephart

Principal and Managing Member, 9/11 Security Solutions, LLC

Former counsel, The National Commission on Terrorist Attacks Upon the United States and an author of *September 11 and Terrorist Travel, A Staff Report of the National Commission on Terrorist Attacks Upon the United States* (August 2004) and “Immigration and Terrorism: Moving Beyond the 9/11 Staff Report on Terrorist Travel” (August 2005)

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INTRODUCTION

Good afternoon and thank you for the opportunity to discuss *terrorist travel* and the *national security role of U.S. Citizenship and Immigration Services* (USCIS) with you today. My testimony stems from a basic commonality amongst all terrorist travel: that (1) terrorists need to get to their destination and (2) stay for however long the mission requirement is in order to be successful. It therefore becomes a mission of all elements of the U.S. border apparatus—such as the visa application to the port of entry through immigration benefits—to have mechanisms in place to deter, detect and interdict the fraud and illegalities that terrorists must inevitably use to push their way through the U.S. border apparatus. My testimony is based on the following work:

- As a counsel to the Senate Judiciary Subcommittee on Technology, Terrorism and Government Information prior to 9/11 where I conducted counterterrorism investigation and oversight inquiries of legacy INS;
- As a counsel on the 9/11 Commission “border security team” which produced the *9/11 Final Report* border facts and draft lessons learned and recommendations;
- As the author of the immigration portions of 9/11 staff report, *9/11 and Terrorist Travel*; and
- As the author of a September 2005 Center for Immigration Studies report, “Immigration and Terrorism: Moving Beyond the 9/11 Staff Report on Terrorist Travel.”

At the Commission, I was responsible for the investigation and analysis of the INS and current DHS border functions as pertaining to counterterrorism, including the 9/11 hijackers’ entry and embedding tactics once in the United States, such as the filing for immigration benefits and acquisition of identifications. My current work includes developing policy and operational solutions against terrorist travel and towards a more comprehensive border strategy that brings all the various elements of our U.S. border apparatus at DHS and the State Department into a closer working relationship.

Please note that the views I present here today are my own, and do not necessarily reflect those of the 9/11 Commission. I want to thank both Chairman Royce and Ranking Member Sherman for holding this hearing. I am particularly pleased to be able to discuss the national security role of USCIS, as the issues regarding immigration benefits were such a seemingly small part of the overwhelming travel information that we developed at

the 9/11 Commission that I have not heretofore had the opportunity to address Congress on this matter. So thank you for putting the spotlight on USCIS and my work in regard to terrorist abuse of immigration benefits.

It is my hope that this Committee will continue to exercise its oversight authority on the important issue of terrorist travel and overall border security from the vantage point of international relations. I hope this Committee will help insure that our Government works with our partners on both sides of our borders and overseas, as well as Interpol, which is making great strides in addressing issues of terrorist travel with their watch notices and lost and stolen passport data now being shared with US and other border inspectors around the world.

IMMIGRATION BENEFITS POLICY- AN OVERVIEW

I hope that our discussion today moves us closer to agreeing on how to solve some of the problems that have plagued our immigration benefits adjudications for decades, many of which can be largely resolved by making sure that we implement the lessons learned as a result of the tragic events of September 11, 2001. Only then are we truly in a position to better assure the national security of the American people.

From the outset, let me make it clear that I, like many, consider the benefits and wealth of human potential that immigration brings to this country to be one of our greatest strengths as a nation. However, I also believe that we owe it to all Americans to maintain the integrity of our borders. To do so, we must scrutinize effectively those who seek to come here and stay here. September 11 has taught us that secure borders are a matter of national security.

Further, we will not have cohesive, coherent policies divested of special interests until we can acquire grassroots support for the good work our federal government should be doing to *encourage legal immigration and discourage illegal immigration in light of the lessons learned from 9/11 and other terrorist abuses of our immigration system*. This should not be a difficult rallying call to the American people. The fact is that nearly all Americans agree that legal immigration enriches the United States. Polls also indicate that a high percentage of Americans do not approve of illegal immigration. Therefore, as we move forward with our policies on border security and immigration, we should consider employing a simple formula: **does this policy provide for a more secure border apparatus while improving legal immigration or discouraging illegal immigration?** Where the answer is “yes” to this question, the solution is worth pursuing.

This formula could generate the set of policies that could drive forward real solutions that enables our border system to acquire respect. When our borders are respected, the American people will begin to see that the border system is providing the security they deserve and rightly demand. In the immigration benefits context, this means taking measures to deter, detect and prevent identification and document (USCIS calls this benefit) fraud—whether sought for economic or criminal/terrorist reasons—while encouraging, facilitating and streamlining legitimate legal immigration.

Today I plan to discuss with you: (1) the 9/11 hijackers' embedding tactics; (2) the results of my September 2005 study on the embedding tactics of 94 other terrorists; (3) recommendations for vastly reducing fraud and addressing national security concerns which should, in and of itself, manifest a more streamlined legal immigration processing.

Lessons learned from the findings in sections (1) and (2) should include:

1. the importance of USCIS in the national security agenda;
2. the need for timely adjudications;
3. based on
 - a. clear law and guidelines;
 - b. forensic document information;
 - c. shared biometrically based traveler / visitor/ immigration histories
 - d. robust fraud detection, deterrence and interdiction conducted by trained professionals; and
 - e. followed up by trained law enforcement professionals in either the criminal (ICE) or administrative (USCIS) arenas.
4. adequate line-item budget to support the mission; and
5. legislative policy support for the mission.

9/11 HIJACKERS' EMBEDDING TACTICS

In *9/11 and Terrorist Travel*, my able colleagues and I discussed in depth the many varieties of terrorist travel tactics. These include fraudulent manipulations of passports, terrorist "calling card" indicators, abuse of a lax Saudi visa adjudication process, and a solid understanding of how to acquire immigration benefits such as a change of status from tourist to student, or a tourist extension of stay. We also discuss how one 9/11 pilot abused the vacuum of information between the State Department consular officers responsible for adjudicating information and immigration benefit application information, a loophole largely closed today with the Student and Exchange Visitor Information System (SEVIS). Another pilot absconded from the immigration benefits system altogether, never seeking to change his tourist status to student despite attaining his pilot's license while in the United States. Two other pilots sought to change their status from tourist to student, enabling them to subsequently re-enter the United States under confusing legal guidelines. Another hijacker sought to extend his stay, did so too late, but was approved anyway.

The 9/11 hijackers also acquired a total of 28 state-issued identifications or drivers' licenses (with four additional issued as duplicates)¹, six of which we know were used at ticket counters on the morning of 9/11.²

¹ *9/11 and Terrorist Travel: Staff Report of the National Commission on Terrorist Attacks Upon the United States*. Franklin, TN: Hillsboro Press, Sept. 2004, p. 44. *9/11 and Terrorist Travel* is available in book form from Hillsboro Press. Available at http://providence-publishing.com/Merchant2/merchant.mvc?Screen=PROD&Store_Code=PP&Product_Code=9ATT&Category_Code=FTANR. It contains corrections to the web version of the staff monograph, along with glossies of the travel documents in the appendices of the report. (I do not receive any royalties from its sales.)

² *9/11 and Terrorist Travel*, p. 43.

Below is a narrative, roughly chronological, explaining the various 9/11 hijackers' encounters with immigration benefits, at that time housed in legacy INS, and today housed at the USCIS. The material here is pulled—and to the extent possible, summarized—from the *9/11 Final Report* and *9/11 and Terrorist Travel*.

Seeking an extension of tourist length of stay

Nawaf al Hazmi was one of two “muscle” hijackers that came to the United States on January 15, 2000 to go to flight school to prepare for the 9/11 operation. He and his colleague (**Khalid al Mihdhar**) would become subjects of a watchlist hunt in late summer 2001, but in early 2000 they came into LAX from Bangkok and received the standard six-month stay that all visa-holding tourists receive.

On July 12, 2000, although failing flight school, **Nawaf al Hazmi** filed to extend his stay another six months in the United States, which was due to expire on July 14, 2000. At this point he was under orders from 9/11 mastermind **Khalid Sheikh Mohamed (KSM)** to stay in the United States. His passport contained a suspicious indicator of extremism, but neither the border inspectors at LAX nor immigration benefits adjudicators knew of this indicator; in fact, no one in intelligence paid attention to it until after 9/11.³

On June 18, 2001, nearly a year after the **al Hazmi** filed his application, the INS approved the extension of stay to January 15, 2001. As I wrote in *9/11 and Terrorist Travel*: “technically, the application was late, since the INS received it in July 2000, after his length of stay had expired; they therefore should not have adjudicated it. However, even with this late adjudication **al Hazmi** was still an overstay as of January 16, 2001. **Al Hazmi** never knew that his extension had been approved—the notice was returned as “undeliverable” on March 25, 2002.”⁴

Seeking a change of status from tourist to student—and not

Ramzi Binalshibh was originally slated to be one of the four 9/11 pilots. He tried four times to obtain a visa to come to the United States; in May and July 2000 in Germany, back in Yemen in September 2000, and once more in Berlin in November 2000. What is interesting about Binalshibh is that he thought, despite his failed attempts to come in legally, that he may be able to enter and stay if he could marry an American woman. He even corresponded via email with a woman in California for a short time. **Mohammed Atta, the operational ringleader of 9/11 and the pilot of American Airlines Flight 11-North Tower World Trade Center**, however, likely considered it too risky, and told Binalshibh to stop the correspondence.⁵

In early 2000, **Atta, Ziad Jarrah (pilot of United Airlines Flight 93- Pennsylvania)**, and **Binalshibh** returned to Germany from Afghanistan. Binalshibh and Atta, stopped to

³ *9/11 and Terrorist Travel*, p. 17.

⁴ *9/11 and Terrorist Travel*, p. 34.

⁵ *The 9/11 Commission Final Report*, (authorized edition), p. 519, note 52 to Chapter 7.

visit with the 9/11 plot mastermind **KSM** on their return. KSM had spent three years in the United States as a student in North Carolina, and was familiar with both U.S. culture and U.S. border functions. In 1983, KSM enrolled first at Chowan College, a Baptist school in Murfreesboro, North Carolina, and then at North Carolina Agricultural and Technical State University in Greensboro. There one of his classmates was Ramzi Yousef's brother, who himself later became an al Qaeda member while Yousef planned the 1993 World Trade Center and Bojinka plots with KSM. Not swayed in the least bit by American culture or democratic ideals, he told his captors in 2003 that even during his U.S. stay in the 1980s he considered killing the radical Jewish leader Meir Kahane when Kahane lectured in Greensboro. KSM graduated with a mechanical engineering degree in December 1986 and then left the United States permanently, (although he did receive a visa to visit the United States in July 2001 that was never used).⁶

Binalshibh states that it was at this early 2000 meeting that **KSM** provided details about how to get in and live in the United States to Atta, Jarrah and himself. **Marwan al Shehhi (pilot of United Airlines Flight 175-South Tower World Trade Center)** also met with KSM.⁷ We know that Al Qaeda trained their troops in terrorist travel, including how to deceive border personnel and others about their affiliation by changing both their radical behaviors and their appearance upon departing Afghanistan.⁸

Once back in Germany, the four began searching for appropriate flight schools. **Atta** did his homework, requesting information via email from 31 various U.S. flight schools.⁹ **Jarrah** decided that he should learn to fly in the United States.¹⁰ And that is what he did. From the day of his first entry in June 2000 on a tourist visa, he proceeded to become a full time student at the Florida Flight Training Center in Venice, Florida until January 31, 2001. He never did not seek a student visa, nor ever seek to file an immigration change of status with legacy INS once in the United States. Instead, he used his tourist visa to re-enter the United States six times from June 2000 until his last entry on August 5, 2001.

The failure to seek the change of status made him inadmissible and subject to removal each of the subsequent six re-entries. However, because neither the school nor Jarrah complied with notice requirements under the law, no one knew Jarrah was out of status. Both Jarrah and the school remained under the radar of potential immigration enforcement. Further complicating potential enforcement action was that at the time there was no student tracking system in place and the school certification program was highly flawed.¹¹

The following I lifted out of my work in 9/11 and Terrorist Travel:

⁶ *The 9/11 Commission Final Report*, pp. 145-150.

⁷ *The 9/11 Commission Final Report*, p. 496, notes 97, 98 to Chapter 5.

⁸ *The 9/11 Commission Final Report*, p. 519, notes 99, 100 to Chapter 5.

⁹ *The 9/11 Commission Final Report*, p. 519, notes 103 to Chapter 5.

¹⁰ *The 9/11 Commission Final Report*, p. 519, notes 102 to Chapter 5.

¹¹ *9/11 and Terrorist Travel*, p. 17.

On July 3, 2000, **al Shehhi** and **Atta** enrolled at Huffman Aviation to take flight lessons. Neither violated his immigration status: attending flight school was permitted as long as their entrance to the United States was legal and they sought to change their status before the expiration of their length of stay in late November and early December. As required by Huffman, both began training as private pilots.¹²

On September 15, 2000 Huffman Aviation's Student Coordinator assisted **Atta** in filling out the student school form I-20M, required by the INS to demonstrate school enrollment. **Al Shehhi** also received an I-20M signed by this coordinator. Both **Atta's** and **Shehhi's** I-539 applications to change their immigration status from tourist (B-1/B-2) to vocational student (M1) were mailed to the INS. Both applications requested that their status be maintained until September 1, 2001. The contents of the applications are substantially the same, including the same financial statement of support, bank statement, and lease. Also in September, the two took flying lessons at Jones Aviation in nearby Sarasota, Florida. They spent a few hours a day flying at Jones, struggling as students because of their poor English. They were aggressive, even trying to take over control of the aircraft from the instructor on occasion. They failed their instrument rating tests there, and returned to Huffman.¹³ They eventually passed their tests at Huffman, and started logging in hours in the air.

As is well known from the Justice Department's OIG report, for a variety of reasons pertaining to processing at immigration service centers, **Atta** and **al Shehhi** actually had their applications to change their status from tourist to vocational student approved and then received by Huffman Aviation on March 11, 2002.¹⁴ That report concludes, in part, as follows:

OIG Conclusions Regarding the Delay in Sending the I-20 Forms to Huffman Aviation

Huffman Aviation received its copies of Atta's and Alshehhi's I-20 forms in March 2002, more than a year and a half after the forms were submitted to the INS in September 2000 and approximately seven months after the I-539 change of status applications were approved in July and August 2001.

We found that the delay in sending the I-20 forms to Huffman Aviation was attributable to several causes. First, the INS did not adjudicate Atta's and Alshehhi's I-539 change of status applications for approximately 10 months. The INS has historically placed a low priority on the adjudication of I-539 applications, and the adjudication of these applications was significantly backlogged in 2001.

¹² *9/11 and Terrorist Travel*, p. 17.

¹³ *9/11 and Terrorist Travel*, p. 19.

¹⁴ Department of Justice Office of the Inspector General "The Immigration and Naturalization Service's Contacts With Two September 11 Terrorists: A Review of the INS's Admissions of Mohamed Atta and Marwan Alshehhi, its Processing of their Change of Status Applications, and its Efforts to Track Foreign Students in the United States," May 20, 2002.

Second, after Atta's and Alshehhi's applications were approved in July and August 2001, ACS did not receive the I-20 forms from the INS for approximately two months after adjudications. Processing was delayed for many weeks due to disorganization in the INS's system for mailing the I-20s to ACS.

Third, ACS processed Atta's and Alshehhi's I-20 forms quickly upon receipt in September 2001 but did not mail the forms to Huffman Aviation for almost 180 days. ACS's actions were consistent with its understanding of its contract at the time and were consistent with its handling of other I-20 forms processed by ACS at the time. However, we found evidence that the INS had intended for the I-20s to be mailed to schools within 30 days not after 180 days.

....

Adjudication of Atta's and Alshehhi's I-539s

In addition to investigating what caused the delay in the INS's processing of the I-20s that were sent to Huffman Aviation on March 11, 2002, we evaluated whether the INS properly approved Atta's and Alshehhi's change of status applications.

The adjudication of I-539 change of status applications consists primarily of a review to ensure that the applicant has submitted the proper documents and the proper fee. *This process is not designed to screen for potential criminals or terrorists; it is designed to ensure that applicants can demonstrate that they have the financial resources to support themselves while in the United States.* INS employees at all levels told the OIG that the INS's philosophy with respect to applications for INS benefits, and specifically the change of status benefit, is that *applicants are presumptively eligible for the benefit unless they affirmatively demonstrate that they are not eligible.*¹⁵

An extension of stay request at the Miami Immigration District Office

One of the most interesting anecdotes from the 9/11 terrorist travel story is **Atta's** May 2, 2001 attempt to obtain an extension of stay for another 9/11 colleague, who I believe was likely **Jarrah**. The two (with a third) probably stood in line at the Miami Immigration District Office for hours, just getting seen before lunch that day. INS district offices adjudicate all types of immigration benefits, and what **Atta** wanted was for his companion to receive the same eight-month length of stay that **Atta** had (wrongfully) received in a January 2001 entry where he was erroneously permitted to enter, and then erroneously given a longer length of stay than permitted under the law. The officer who adjudicated Atta's request was an airport inspector on her first tour of duty in an

¹⁵ <http://www.usdoj.gov/oig/special/0205/chapter4.htm#VI>

immigration benefits office and remembered the encounter vividly when I interviewed her.

The shorter version of the story as I relate it in *9/11 and Terrorist Travel* is as follows:

The inspector recalled taking both passports to see if they had genuine visas. She also looked at the I-94 arrival records in the passports. Atta's companion had received a six-month stay as a tourist, with an end date of September 8, 2001. She also noticed that Atta had been admitted as a tourist for eight months. During this time, Atta was quiet. She told Atta, "Someone gave you the wrong admission and I'm not giving your friend eight months."

The inspector then went to her supervisor, informed him that Atta had been granted an incorrect length of stay, and asked permission to roll it back to six months. The supervisor agreed. The inspector then tore the I-94 record out of Atta's passport, and created a new I-94 for six months, which allowed Atta to remain in the United States until July 9, 2001. On the record she wrote: "I-94 issued in error at MIA [Miami International Airport]. New I-94 issued." The inspector then took a red-inked admission stamp, rolled the date back to January 10, and stamped Atta as a B-2 tourist. She wrote in a length of stay until July 9, 2001, and handed Atta back his passport and new I-94 record. Atta took the documents, said thank you, and left with his companions.¹⁶

The result of this inspector's good work was that instead of Jarrah being legally in the country along with Atta until 9/10/01, Atta had to leave in July prior to the expiration of his legal length of stay. It was to no avail, but it was another missed opportunity for law enforcement.

*I authored the following material on **Hani Hanjour (pilot American Airlines Flight 77-Pentagon)** for *9/11 and Terrorist Travel*. It was not included in the final product because its content pre-dated Hanjour's affiliation with the 9/11 plot. However, because it makes for an interesting case of how Hanjour manipulated immigration benefit adjudications throughout the 1990s up until his last U.S. visa application, it is here in full.*

This is this content's first release to the public. (My 9/11 Commission colleague, Tom Eldridge did the visa portions of this piece.) I have not included the footnotes, as the Commission interviews used for these portions were covered by a nondisclosure agreement with the State Department.

Until we have all applications biometrically based to verify and freeze identities and all immigration histories available to all personnel—from visa adjudications through immigration benefits-- the confusion and fraud in our immigration benefits system, as demonstrated below, will continue.

¹⁶ *9/11 and Terrorist Travel*, pp. 30-31.

Hani Hanjour, Pilot of American Airlines Flight 11

Hani Hanjour was born August 30, 1972, in Taif, Saudi Arabia. He is the first 9/11 hijacker to acquire a U.S. visa and come to the United States. He enters four times prior to September 11, seeking a U.S. education three of those four times. Hanjour is the only hijacker to have a lengthy familiarity with the United States prior to the operational build-up for the plot. There is no indication, however, that Hanjour was made part of the operational plot until sometime before his last entry into the United States in December 2000.

Hanjour's first two visas and entries, in 1991 and 1996.

Immigration records for Hanjour indicate that he acquires B2 (tourist) visas for his first two entries into the United States in Saudi Arabia in September 1991 and March 1996. Hanjour enters the United States on these visas within a month of acquiring them on October 3, 1991 and April 2, 1996. There is no record as to when Hanjour leaves after his first entry in October 1991. He is given a six-month stay.

Records do indicate that when Hanjour returns in April 2, 1996, he is given a six-month length of stay as a tourist. Hanjour's March 1996 tourist visa is issued with a notation on the application stating "prospective student, school not yet selected". On June 7, 1996, Hanjour files an INS I-539 application to change status from tourist to an academic student to attend the ELS Language Center in Oakland, California until May 20, 1997. The application is quickly approved twenty days later, on June 27, 1996.

Well before his length of stay is up, Hanjour leaves the United States again in November 1996.

Hanjour's 1997 visa and entry

Hanjour's second two visas and entries from Saudi Arabia are on one-year academic visas, one into Atlanta on November 16, 1997, and the last into Cincinnati on December 8, 2000.

On his November 1997 application, Hanjour spells his last name "Hanjoor." It is not uncommon to see Arabic names spelled in various ways. Hanjour answers "no" to the question "Have you ever applied for a U.S. visa before, whether immigrant or nonimmigrant?" He also answers "no" to the question "Have you ever been in the U.S.A.?" Because there is evidence that Hanjour has been in the United States on a B2 (visitor) visa twice before, it appears that Hanjour's application contains at least one false statement.

It is difficult to establish the intent behind these false statements. The application does bear a signature that appears identical to the signature on Hanjour's two 2000 visa applications. However, the application form also indicates that it is prepared by "Siddiqi/ Samara Travel." Thus, the false statements may have been inadvertent, due possibly to a travel agent who filled out the form before Hanjour signed it.

In addition to the false statements, Hanjour also leaves some portions of the application blank. For example, although Hanjour lists his occupation as "student"

and he does not fill in the field asking for the “name and street address of present employer or school.” (We do not know whether he was asked the name of the school he wanted to attend in the US.) Not surprisingly, Hanjour also leaves blank the question “Are you a member or representative of a terrorist organization?”

The consular officer who adjudicates Hanjour’s 1997 visa application interviews him on November 2, 1997. This officer says that the decision to interview a Saudi citizen in Jeddah was a “case-by-case” decision, but that they would interview 50-60 percent of Saudis who applied in Jeddah during this time period. The officer said their colleagues advised them of this interview policy after they arrived in Jeddah. The interviews often were cursory, a comparison between the person applying and the photo they submitted, plus a few questions about why the applicant wanted to go to the United States. Because the officer who interviews Hanjour cannot read or speak Arabic, he relies on local embassy staff or an American colleague to help him conduct interviews. Similarly, the officer relies on experienced local staff to spot any anomalies in an application. The officer told us that they interviewed Hanjour during “the low season,” possibly indicating that they had more time to conduct interviews.

It is not uncommon to request the applicant to provide additional documentation before a certain visas could be granted. For example, a student applicant was required to present an INS form I-20 and proof of funds sufficient to pay for the education. If the applicant wanted to go to the United States to attend flight school – something common in Jeddah because Saudi Airlines was headquartered there – consular officers would request to see a letter from a bank showing the amount in the applicant’s bank account in order to establish whether they could, in fact, afford to pay for the schooling.

The officer did not specifically recall many details of their interview of Hanjour on November 2, 1997, but was able to reconstruct some aspects of it contemporaneously from notes on the visa application. During the course of the interview, the officer wrote down on the face of the application “has cash,” “trav alone,” and “wants to go to flight school.” The officer told us that he believed he must have looked at a bank statement from Hanjour in order to conclude he “has cash.” The officer also believed based on his review of the application that, during his interview of Hanjour, he established that he was traveling alone, and that his spoken English ability matched the requirements of his student visa.

The officer said they would not have known about Hanjour’s prior travel to the U.S. unless it was reflected in his passport. The officer also said they could not understand why Hanjour would have sought to cover up prior travel to the U.S. “It’s perplexing that they would hide that because it works in their favor,” the officer said. The officer did say, though, that a Saudi who had been to the United States twice before, as Hanjour apparently had been, and who then applied to go to the U.S. for English studies would have “raise[d] an eyebrow” because a student visa applicant must demonstrate they have made reasonable progress in their studies. The officer said they did deny visas to underperforming Saudi students on some occasions.

The officer also said that it was not uncommon for Saudis to have third parties prepare their visa applications, and not uncommon for those third parties to make mistakes. It was not unusual for Saudis to not fill out their applications completely, including failing to sign their application, so that Hanjour's failure to answer the question about being a member of a terrorist organization was not unusual in his experience. In general, the officer told us, they felt they could make visa adjudications with only the basic biographical information Saudis typically provided. However, the officer made a point of telling us that "it bothered me; it disturbed me" to accept so many incomplete applications from Saudis. When they raised it at post, they were told by the local staff, "well, we have always done it this way."

Finally, the officer checked the CLASS database for any derogatory information on Hanjour. There were no "hits." Thus, based on a review of Hanjour's documents, his interview with him and his check of the CLASS name check database, the consular officer issued Hani Hanjour an F-1 (student) Visa of 12 month's duration.

After being issued the one-year academic F1 visa on November 2, 1997, Hanjour travels on November 16 of that year to the United States on that visa and is granted a two-year length of stay. The visa is for attendance at the ELS Language Centers in Florida. On June 16, 1998, however, Hanjour decides to attend flight school. He files a second I-539, this time seeking a change of status from an F1 academic student to a M1 vocational student to attend the Cockpit Resource Management Airline Training Center in Scottsdale, Arizona from July 30, 1998 to July 29, 1999. Eight months later, the INS requests supporting evidence. By April 1999, having already attended the flight school and received a commercial pilot license from FAA without ever acquiring INS approval to change his status to an M1, Hanjour departs again in December 1999. This I-539 will not be approved until January 16, 2001. By this point, Hanjour has already acquired a new academic visa and re-entered the United States for his last time.

These entries on Hanjour are lifted from 9/11 and Terrorist Travel:

September 10. Hani Hanjour again applied for a B1/B2 (tourist/business) visa in Jeddah, Saudi Arabia. Hanjour submitted a new passport issued on July 24, 2000. He stated on his application that he would like to stay for three years in the United States, an answer that triggered concern in the minds of consular staff that he was at risk of becoming an immigrant to the United States if he were granted the visa. A consular employee who screened Hanjour's application forwarded him to a consular officer for an interview. Hanjour told the consular officer that he was going to attend flight training school in the United States and wanted to change his status to "student" from "tourist" once he arrived in the United States. "Look, you have spent enough time in the States" to know what you want to do there, the officer told Hanjour. Based on Hanjour's prior travel to the United States, the officer said to him, he did not qualify for a tourist visa in

order to go to the U.S. and find a school “because he had been in the States long enough to decide what he wanted.” For these reasons, the officer denied Hanjour’s application under INA section 221(g).¹⁷

September 25. Hanjour returned to the Jeddah consulate and, apparently having listened to what the consular officer told him, submitted another application for a student visa. This time, Hanjour stated a desire to attend the ELS Language Center in Oakland, California. A consular official—probably the intake screener—wrote a note on his application indicating that Hanjour had been denied a visa under section 221(g) on September 10. The same consular officer who had interviewed Hanjour in connection with his September 10 application also processed this one. He recalled to us that Hanjour or someone acting on his behalf submitted an INS school enrollment form, or I-20—required to qualify for a student visa—to the consulate late on September 25, 2000. “It came to me, you know, at the end of the day to look at it. I saw he had an I-20, and it [his visa] was issued.”¹⁸

State Department electronic records indicate that this approval allowed Hanjour to “overcome” his September 10 visa denial, another indication that multiple applications can be considered “one case.” State Department records erroneously recorded the visa issued to Hanjour as a B-1/B-2 (business/tourist) visa when, in fact, it was an F (student) visa that was printed and put in Hanjour’s passport. In addition, Hanjour had already received an approved change of status to attend this same English language school in 1996. But that approval was granted by the INS in the United States, and the State Department had no record of it. The consular officer told us that if he had known this information, he might have refused Hanjour the visa.¹⁹

IMMIGRATION AND TERRORISM: MOVING BEYOND THE 9/11 STAFF REPORT ON TERRORIST TRAVEL (Sept. 2005)

There is nothing more important to a terrorist than getting where he needs to go and being able to stay there long enough to carry out his or her instructions. We call this “embedding.” As I wrote in *9/11 and Terrorist Travel*, “while the rhetoric continues to focus on the critical mission of terrorist entry, virtually no attention is being given to the most recent information about terrorist travel and to the mission... of preventing terrorists who get in from staying in.”²⁰

Overview of Report Findings²¹

The inadequacies of our Citizenship and Immigration Services agency continue to make embedding relatively easy. Religious worker visas are known to carry a 33 percent fraud

¹⁷ *9/11 and Terrorist Travel*, pp. 18-19.

¹⁸ *9/11 and Terrorist Travel*, p. 19.

¹⁹ *9/11 and Terrorist Travel*, p. 20.

²⁰ *9/11 and Terrorist Travel*, p. 164.

²¹ Janice L. Kephart, “Immigration and Terrorism: Moving Beyond the 9/11 Staff Report on Terrorist Travel,” Center for Immigration Studies (Sept. 2005).

rate.²² Political asylum and naturalization are two of the benefits most rampantly abused by terrorists. And even when naturalization is acquired, we do not require the new U.S. citizen to renounce his or her country of origin, or hand in old passports. One well-known terrorist and naturalized U.S. citizen, Abdulrahman Alamoudi, now spending 23 years in prison for illegal financial dealings with the Libyan government (which included a plot to assassinate a Saudi prince), was able to hide much of his travel abroad from U.S. immigration inspectors for years by using his old passports for travel while he was visiting countries outside the United States.

My September 2005 Center for Immigration Studies report, *Immigration and Terrorism: Moving Beyond the 9/11 Staff Report*, covers the immigration histories of 94 terrorists who operated in the United States between the early 1990s and 2004, including six of the September 11th hijackers discussed above. The report included persons with a clear nexus to terrorist activity, with nearly all of these individuals indicted or convicted for their crimes. The report was built on prior work done by the 9/11 Commission and the Center for Immigration Studies, providing more information than has been previously been made public.

The findings show widespread terrorist violations of immigration laws and abuse of the U.S. immigration benefits system. In fact, 11 of the violations noted in the report were persons who had acquired immigration benefits before or around 9/11, but whose terrorist plots within the United States occurred after 9/11. Violations were rampant with plots to blow up a shopping mall in Ohio, for example, along with surveillance of financial buildings in northern New Jersey/New York and North Carolina.

The findings also show that not just Al Qaeda violates our immigration laws—the study cuts across a variety of terrorist organizations.

Many of these terrorists may have been affiliated with one or more terrorist organizations, but 40 individuals are associated with al Qaeda, 16 with Hamas, 16 with either the Palestinian or Egyptian Islamic Jihad, and six with Hizballah are specifically identified. Three are unaffiliated but of a radical Islamist background; one each is affiliated with the Iranian, Libyan or former Iraqi governments; one each is associated with the Pakistani terrorist groups Lashkar-e-Taiba and Jaish-e-Mohammad; and the affiliations of eight others indicted or detained on terrorism-related charges are unknown.²³

The report highlights the danger of our lax immigration system, not just in terms of whom is allowed in, but also how terrorists, once in the country, used weaknesses in the system to remain here. The report makes clear that USCIS must be an integral player in border security, raising the bar on its usual persona as merely a customer service agency

²² USCIS Fraud Detection and National Security Benefit Fraud Assessment statistic.

²³ Janice L. Kephart, “Immigration and Terrorism: Moving Beyond the 9/11 Staff Report on Terrorist Travel,” Center for Immigration Studies (Sept. 2005), p. 11.

to one of having a critical role in national security—the last chance to say no to a terrorist who seeks to stay here longer under U.S. immigration laws.

The summary of findings in the report is as follows (*these are lifted verbatim from the report*):

- Of the 94 foreign-born terrorists who operated in the United States, the study found that about two-thirds (59) committed immigration fraud prior to or in conjunction with taking part in terrorist activity.
- Of the 59 terrorists who violated the law, many committed multiple immigration violations — 79 instances in all.
- In 47 instances, immigration benefits sought or acquired prior to 9/11 enabled the terrorists to stay in the United States after 9/11 and continue their terrorist activities. In at least two instances, terrorists were still able to acquire immigration benefits after 9/11.
- Temporary visas were a common means of entering; 18 terrorists had student visas and another four had applications approved to study in the United States. At least 17 terrorists used a visitor visa — either tourist (B2) or business (B1).
- There were 11 instances of passport fraud and 10 instances of visa fraud; in total 34 individuals were charged with making false statements to an immigration official.
- In at least 13 instances, terrorists overstayed their temporary visas.
- In 17 instances, terrorists claimed to lack proper travel documents and applied for asylum, often at a port of entry.
- Fraud was used not only to gain entry into the United States, but also to remain, or “embed,” in the country.
- Seven terrorists were indicted for acquiring or using various forms of fake identification, including driver’s licenses, birth certificates, Social Security cards, and immigration arrival records.
- Once in the United States, 16 of 23 terrorists became legal permanent residents, often by marrying an American. There were at least nine sham marriages.

- In total, 20 of 21 foreign terrorists became naturalized U.S. citizens.²⁴

A Note on Hizballah

Recent news reports about the affiliation of Iran with Hizballah and concerns that U.S. military action against Iran could trigger Hizballah attacks against U.S. troops in Iraq and civilian targets within the United States warrant mention in the immigration context here. Below I relate two known Hizballah schemes for entry and stay in the United States: one uses USCIS benefits, and the other is illegal entry which is outside the purview of this hearing, but worth mentioning within the light of the current pending immigration legislation and debate.

Sham marriage. From January 1999 through January 2000, **Said Mohamad Harb**, one of the key figures in Hizballah's North Carolina cigarette smuggling operation run by **Mohamad Hammoud**, which raised millions of dollars for Hizballah, helped secure three fraudulent visas and three sham marriages. He was able to "legally" bring his brother, brother-in-law, and sister into the United States so that they might become legal permanent residents.

The two men each obtained a nonimmigrant visa from the U.S. embassy in Cyprus; though given one- and two-week lengths of stays for conducting business in the United States, each married a U.S. citizen immediately after his arrival and therefore was allowed to stay indefinitely. In the case of **Harb's** sister, a male U.S. citizen was paid to meet her in Lebanon and then travel with her to Cyprus, where their marriage enabled her to acquire an immigration visa. In June 2000, **Harb** also attempted to give an immigration special agent a \$10,000 bribe so that another brother could enter the United States.²⁵ All the conspirators were convicted of all counts against them, including the immigration violations.

Alien smuggling. Hizballah is well known for its illegal smuggling tactics into the United States.

Around February 2001, **Mahmoud Youssef Kourani**, a Hizballah operative who pled guilty to terrorism charges in Detroit in April 2005, entered the United States illegally. Kourani left Lebanon to travel to Mexico after bribing a Mexican consulate official in Beirut with \$3,000 to obtain a Mexican visa. Once in Mexico, he sought entry into the United States. He succeeded: he illegally entered the United States across the southwest border by hiding in a car trunk.²⁶

In November 2003, a federal grand jury indicted **Kourani** on charges of conspiring to provide material support to Hizballah, a designated foreign terrorist organization. The

²⁴ Janice L. Kephart, "Immigration and Terrorism: Moving Beyond the 9/11 Staff Report on Terrorist Travel," Center for Immigration Studies (Sept. 2005), p. 7.

²⁵ USA v Hammoud, et al. WDNC 00-CR-147. "Superseding Indictment." Mar. 28, 2001.

²⁶ USA v. Kourani. EDM I 03-CR-81030. "Government's Written Proffer in Support of its Request for Detention Pending Trial." Jan. 20, 2004.

indictment alleges that **Kourani** was a “member, fighter, recruiter, and fundraiser for Hizballah who received specialized training in radical Shiite fundamentalism, weaponry, spy craft, and counterintelligence in Lebanon and Iraq.” It also claims that **Kourani** recruited and raised money for Hizballah while in Lebanon.²⁷ Government documents also state that **Kourani** alone sent back about \$40,000 to Hizballah.

Salim Boughader Mucharrafile is the well-known Lebanese-Mexican smuggler who is the only known smuggler our 9/11 team could identify at the time we published our *9/11 and Terrorist Travel* staff report in August 2004 as linked to suspected terrorists. Convicted in Mexico, he was then extradited to the United States for trial here.

Until his arrest in December 2002, **Boughader** smuggled about 200 Lebanese Hizbollah sympathizers into the United States. Most of these sympathizers were young men, sent by their families to make money to send back to Lebanon. One client, **Boughader** said, worked for a Hizbollah-owned television network, which glorifies suicide bombers and is itself on an American terror watch list. Although we do not know whether **Kourani** used **Boughader’s** services, the methods **Kourani** used to enter the United States are the same methods **Boughader** used on behalf of his clients.

According to extensive Associated Press reporting on **Boughader**, he told reporters "If they had the cedar on their passport, you were going to help them. That's what my father taught me.... What I did was help a lot of young people who wanted to work for a better future. What's the crime in bringing your brother so that he can get out of a war zone?"²⁸

RECOMMENDATIONS

Benefits adjudications, like visa issuance and port of entry admissions, need to be as secure and as timely as possible. Fraud and national security concerns get in the way of timely adjudications, bogging down legitimate applications and have a twofold effect: (1) legitimate applicants are not adjudicated in a timely manner while many legitimate potential applicants are discouraged from applying while (2) illegitimate applicants take advantage of the vulnerabilities of the system. By ramping up a number of areas, including fraud detection, deterrence and interdiction alongside providing better information and clearer guidelines to adjudicators within a program office wholly dedicated to fraud and working in cooperation with law enforcement officers at ICE and elsewhere, we can look towards a much more efficient and secure process. Those that should be receiving benefits will then begin to receive benefits in a timely manner, and those that should not receive benefits will not, and those that should be criminally prosecuted, will make their way to federal court.

Both the 9/11 Final Report and my “Immigration and Terrorism” report discuss many recommendations, all of which I support and urge this committee to look at closely. Some of these are below. I have also added a few.

²⁷ USA v. Kourani. EDMI 03-CR-81030. “Indictment.” Nov. 19, 2003.

²⁸ Pauline Arrillaga and Olga Rodriguez, “Smuggler pipelines channel illegal immigrants into U.S. from nations with terror ties” The Associated Press (July 2, 2005)

- **Assure that USCIS is treated as an equal partner in a national border security agenda.** The attack of 9/11 was not an isolated instance of al Qaeda infiltration into the United States. In fact, dozens of operatives from a variety of terror organizations have managed to enter and embed themselves in the United States, actively carrying out plans to commit terrorist acts against U.S. interests or support designated foreign terrorist organizations. For each to do so, they needed the guise of legal immigration status to support them.

As we move forward, those who come to stay and embed themselves into communities throughout the United States will continue to rely on a false guise of legality. More aggressive culling of applications for national security risks will help prevent terrorists from attaining enhanced immigration status on the front end. However, it must therefore be a prerequisite for any strategy that seeks to attain border security to include the United States Citizenship and Immigration Service (USCIS) in fraud prevention and national security agendas.

- **Require all applications to be biometrically based. Identities must be verified in person and documents reviewed for fraud. Forensic document examiners should be made available to every immigration benefits office.** Two Benefit Fraud Assessments (BFAs) have been conducted to date. The Religious Worker BFA found a fraud rate of 33% and the Replacement Permanent Resident Card BFA found a fraud rate of 1%. The likely reason: religious worker petitions are not biometrically based, permanent resident cards are. Biometrics are essential for freezing identity. Once that is done, the problem of multiple applications under multiple aliases is reduced dramatically, and other immigration and criminal history becomes much easier to link with the applicant.
- **Assure that immigration benefits adjudicators have access to entire traveler histories, which over time should be person-centric (not file-centric).** The nearly 30 immigration databases, while not necessary to create a single one, should be streamlined and most definitely fully networked so anyone working in the border apparatus will have access to full and complete traveler/ visitor/ immigration histories.
- **All petitioners should be subject to security background checks, with real-time access to federal, state, and local law enforcement information upon request.** The more access that is given to the national security or law enforcement information that exists on a foreign national, the less we will need to rely upon unwieldy name-based watchlists. The more security measures the United States incorporates into its own adjudications of immigration benefits *before* they are granted, the more success the United States will have in rebuffing terrorists who seek to embed here and spending inordinate government resources in reversing bad benefits decisions.

- **Commit to enforcing the law with better and more resources.** Better resources include clearer guidelines for processing immigration benefits in order to eliminate the arbitrary decision-making that inevitably takes place in their absence. In addition, comprehensive immigration reform must entail, in the long run, not only streamlining the overly complex immigration laws, but also providing sufficient human and technological resources to enforce the law on the border *and* in USCIS immigration benefits centers.
- **Enhance the USCIS Office of Fraud Detection and National Security (FDNS) by giving FDNS a continued line item budget for conducting long term and real time fraud assessments, and pattern analysis of fraud.**

Note: I personally requested a briefing from this unit after publication of my CIS report in October 2005. Over the course of a number of meetings I came away satisfied that FDNS was ramping up adequately to address fraud.

USCIS is a service (*not enforcement*) bureau to address long-term issues pertaining to backlogs and fraud in immigration benefits adjudications. A unit dedicated to fraud detection (with enforcement handled by ICE) is new to this arena, and absolutely essential and supported by the findings and recommendations in GAO Report 02-66 of January 2002, “Immigration Benefit Fraud: Focused Approach is Needed to Address Problems.” FDNS today is the “organizational crosswalk” that acts on behalf of USCIS and DHS, as the primary conduit to and from the law enforcement and intelligence community on potential fraud and national security concerns posed by immigration benefit applicants.

ICE and FDNS—while it took much negotiation and time—do have a working relationship and joint anti-fraud strategy. Roles in this strategy are defined: USCIS via FDNS is to detect and analyze suspected fraud, while ICE is to follow up referrals for possible criminal investigation and presentation for prosecution. This includes a USCIS referral process and a fraud tracking system with case management as well as analytic capabilities that are currently under development. In the future, all incoming cases will be bounced against USCIS’ new Fraud Detection and National Security Data System (FDNS-DS). If fraud is detected and verified but not accepted for investigation by ICE (as most will not reach the threshold for criminal prosecution) the benefit is denied, a lookout is posted in TECS, and the alien placed in removal proceedings. At present, FDNS is using its reactive tool to connect the dots, SC CLAIMS.

USCIS has already recruited, hired, trained, and deployed 160 FDNS officers throughout the Country. In the first year of operation (FY05) alone, USCIS identified 2,289 suspected fraud cases. Most are former adjudicators that possess immigration benefit law and policy-related expertise that criminal investigators do not possess. This is extremely valuable when conducting inquiries and investigations of employment and religious worker-based petitions, which are highly technical in nature. In addition to performing fraud-based systems checks

and analyses, and conducting administrative inquiries/investigations, FDNS officers perform background check and national security-related duties, and are USCIS' primary conduit to/from the enforcement and intelligence community. While there are millions of applications and fraud is known to be rampant in applications, this is a solid start.

In addition, the DHS OIG recommended in its July 2005 draft report entitled "Review of U.S. Citizenship and Immigration Services' Alien Security Checks," that USCIS "implement the Background Check Analysis Unit in the Office of Fraud Detection and National Security." DHS has recognized the need to expand FDNS' mandate beyond fraud detection.

- **Establish a fraud fee.** Fraud is so rampant throughout the border apparatus that it only makes sense that all applications (including visa issuance) should support its detection and deterrence. The less fraud, the faster the legitimate applications can be processed, making the entire system operate with necessary integrity and without severe backlogs. The value of FDNS is to provide the expertise and referrals for large fraud cases while taking care of the smaller cases in-house (after the proper procedures are followed per agreement with ICE).
- **Integration of anti-fraud efforts across USCIS, ICE, DOS and DOL.** For example, DOS needs to be able to verify claimed persecution, employment experience, academic credentials, and relationships associated with immigrant and nonimmigrant petitions adjudicated by USCIS. All four agencies need to share information so that fraud cannot replicate itself throughout the system. Already developed are national and three regional interagency immigration benefit fraud task forces. Currently, an ICE special agent is collocated with FDNS-HQ and with each USCIS' Center Fraud Detection Unit.

CONCLUSION

USCIS' mission should no longer be simply considered to be reducing horrendous backlogs. Rather, USCIS must have a proactive role in adjudicating legitimate applications in a timely manner and detecting, deterring and interdicting fraudulent applications—with a priority on applications that pose a national security concern, such as the terrorists outlined in this testimony.

With proper mission support by Congress and the administration, USCIS can change its current posture. It will take work to reverse the years of inadequacies and failures, but modern technology, well trained adjudicators, a good working relationship with federal law enforcement partners, clearer laws and guidelines, and a commitment to streamline traveler histories with biometrics will all help move USCIS forward to where it needs to be to truly serve foreign nationals who seek to come and stay in the United States for legitimate purposes, and stop those who seek to abuse our freedoms and do us harm.

I believe we can do it. But USCIS needs your support and help to make it happen.